

Testimony of

The Honorable Patrick Leahy

June 18, 2003

I want to thank Chairman DeWine and Senator Kohl for holding this hearing today. This merger, and the larger issue of media consolidation, are very important to all of us, and I commend my colleagues on the Antitrust Subcommittee for continuing their fine tradition of bipartisan attention to important issues. We are becoming increasingly aware of the dangers of corporate consolidation, especially in the information and entertainment industries, where the First Amendment as well as the antitrust laws have significant roles to play. A hearing like this one is particularly timely and constructive, as we in the Senate strive to protect both the freedom of the marketplace and the freedom of speech.

No one in this room could have missed the firestorm of debate and outcry that accompanied the Federal Communications Commission's recent changes in the media ownership rules. I recognize that those changes do not touch directly upon the merger that we are addressing here today, but they are a tangible piece of the puzzle we are all trying so hard to solve. The Commerce Committee is thinking about it tomorrow. We will have another hearing on media concentration next week. Meanwhile the FCC continues to roll back the regulations that were designed to preserve a diversity of programming options and to ensure a variety of owners and a host of editorial choices and voices. The inevitable and escalating homogenization of programming can hardly inure to the benefit of viewers and listeners. I know this is true in rural States like Vermont, where we value our independence and we prize community-level debate and discussion, but I believe it is also true in every State and community across the land. When we add to that the likelihood that increasingly powerful media conglomerates can raise the prices consumers pay, at the same time that they can reduce the quality of their programming, the implications of unfettered media conglomeration to the American people and to our communities and to our society become troubling indeed.

I fear that is precisely the situation we find ourselves in today. As I wrote to the FCC when the rule changes were under consideration, there are those who argue that the increase in the number of media outlets has obviated the need for the rules limiting media ownership. The reality, of course, debunks this notion. While the number of media outlets has increased, ownership has become more concentrated. There are certainly no fewer opinions among the American people than in 1975 when the recently overturned standards were established, but there indisputably are fewer true avenues for their expression to meaningfully reach sizable segments of the population. In light of that incontrovertible fact, it seems illogical that the FCC would exacerbate a disturbing trend which is transforming the marketplace of ideas into little more than a corporate superstore.

The proposed deal between DirecTV and NewsCorp is not implicated by these rule changes, but it is an unavoidable truth that the atmosphere of concern created by the FCC's actions and attitudes will color the evaluation of all media deals. Each time that the FCC eases some restriction, we are assured that the "public interest" inquiry that the agency undertakes on such deals, along with the antitrust analysis conducted by the Justice Department, will ensure that consumers' legitimate interests are protected. Surely this merger is a deal to test the truth of this repeated assertion.

The questions raised about DirecTV and NewsCorp are hardly novel: When the nation's largest home satellite TV service is purchased by one of the world's largest media companies, it can come as no surprise that people are concerned about the choices consumers will really have. Will the new entity discriminate against other distributors, like cable companies, and especially against the small cable companies that serve many rural areas? Will this new entity discriminate against other content providers? Or will they favor NewsCorp's own popular programming - such as shows on the Fox TV network, Fox News Channel, and Fox sports channels?

I have two other major concerns, which are especially important to Vermont: the provision of local-into-local television to smaller Designated Marketing Areas (DMAs) and the roll-out of broadband service to under-served communities. Local-into-local television is critical to my state because it will allow satellite customers to get their local news and weather. Since July 2002, EchoStar has provided local-into-local television to its customers in Vermont. NewsCorp has assured me that they want to provide local-into-local TV to Vermont, but they have been unable to answer the

question of when they will have the technological capacity. The same holds true for broadband to the under-served areas. Again, NewsCorp is hopeful they will be able to provide broadband to potential customers as soon as it can, but they have been unable to offer a timeframe.

This proposed merger raises many questions and concerns, and I appreciate all the witnesses being here today to help us address them. I look forward to hearing from you all.

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